

1 EDMUND G. BROWN JR.
Attorney General of the State of California
2 DANE R. GILLETTE
Chief Assistant Attorney General
3 GERALD A. ENGLER
Senior Assistant Attorney General
4 PEGGY S. RUFFRA
Supervising Deputy Attorney General
5 JOAN KILLEEN
Deputy Attorney General
6 State Bar No. 111679
455 Golden Gate Avenue, Suite 11000
7 San Francisco, CA 94102-7004
Telephone: (415) 703-5968
8 Fax: (415) 703-1234
Email: Joan.Killeen@doj.ca.gov
9 Attorneys for Respondent

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 **EDMOND BELONEY,**

Petitioner,

15 **v.**

16 **ANTHONY HEDGPETH, Warden,**

Respondent.

C 07-4327 WHA (PR)

19 **ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS**
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15 v.

16 **ANTHONY HEDGPETH, Warden,**

17 Respondent.
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C 07-4327 WHA (PR)

**ANSWER TO PETITION FOR
WRIT OF HABEAS CORPUS**

19 Respondent provides this Answer to the Petition for Writ of Habeas Corpus:

20 I

21 CUSTODY

22 Petitioner, Edmond Beloney, is lawfully in state custody pursuant to the 2005 judgment
23 for convictions of first degree residential robbery while acting in concert, Cal. Penal Code §
24 213(a)(1)(A), with findings that the crimes were committed for the benefit of, at the direction of, or
25 in association with a criminal street gang, and that petitioner had the specific intent to promote,
26 further, or assist in any criminal conduct by gang members, Cal. Penal Code § 186.22(b)(4), for
27 which he was sentenced to 15 years to life in prison by the Santa Clara County Superior Court.
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II

EXHAUSTION OF STATE REMEDIES

Petitioner has exhausted his state remedies with respect to the claims raised in his petition. However, claim two, in which petitioner alleges his sentence constitutes cruel and unusual punishment, has been procedurally defaulted because petitioner failed to raise his constitutional objection in the trial court. *Davis v. Woodford*, 384 F.3d 628, 654 (9th Cir. 2004).

III

STATEMENT OF FACTS AND PROCEDURE

Respondent incorporates by reference the statement of facts and procedure contained in the accompanying memorandum of points and authorities in support of the answer.

IV

DENIAL OF CLAIMS

Respondent denies that petitioner's federal constitutional rights were violated in any way. Specifically, respondent denies that petitioner's Fifth and Fourteenth Amendment rights to due process were violated by insufficient evidence to support the gang enhancement, that his Eighth Amendment right to be free from cruel and unusual punishment was violated by the sentence imposed, and that his Fifth, Sixth, and Fourteenth Amendment rights were violated by the trial court's failure to define the term "in association with."

V

AVAILABLE TRANSCRIPTS AND RECORDS

Attached are the Clerk's and Reporter's Transcripts of the trial, together with other relevant records, as indicated in the Index of State Court Records Lodged in Support of Answer, incorporated herein by reference.

VI

GENERAL DENIAL

Except as otherwise admitted, respondent denies each and every allegation of the petition which, if found true, would form the basis of federal habeas relief.

1 WHEREFORE, respondent respectfully requests that the petition for writ of habeas corpus
2 be denied.

3 Dated: December 5, 2007

4 Respectfully submitted,

5 EDMUND G. BROWN JR.
6 Attorney General of the State of California

7 DANE R. GILLETTE
8 Chief Assistant Attorney General

9 GERALD A. ENGLER
10 Senior Assistant Attorney General

11 PEGGY S. RUFFRA
12 Supervising Deputy Attorney General

13 /s/ Joan Killeen
14 JOAN KILLEEN
15 Deputy Attorney General
16 Attorneys for Respondent
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